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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/676,637	10/01/2003	Mark L. Wilkinson	1073.P003US	7864
32794 7590 01/24/2008 KOESTNER BERTANI LLP 2192 Martin St. Suite 150 Irvine, CA 92612			EXAMINER TRUONG, THANHNGA B	
			ART UNIT 2135	PAPER NUMBER
			MAIL DATE 01/24/2008	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/676,637

Applicant(s)

WILKINSON ET AL.

Examiner

Thanhnga B. Truong

Art Unit

2135

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 October 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-86 is/are pending in the application.
- 4a) Of the above claim(s) 41, 56, 71 and 86 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 3-40, 42, 44-55, 57-67, 69-70, and 72, 74-85 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date: _____
- ☐ Notice of Informal Patent Application
- ☐ Other: _____

DETAILED ACTION

1. This action is responsive to the communication filed on October 09, 2007. Claims 1-86 are pending. At this time, claims 1, 3-40, 42, 44-55, 57-67, 69-70, and 72, 74-85 are still rejected.

Response to Arguments

2. Applicant's arguments filed October 09, 2007 have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of Roesch et al (US 7,240,368 B1).

Election/Restrictions

3. Applicant's election with traverse of **Species 1** in the reply filed on May 01, 2007 is acknowledged.

Claims 41, 56, 71, and 86 are withdrawn by the applicant from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species 2. Election was made with traverse in the reply filed on May 01, 2007. This is not found persuasive because each of the various disclosed species details a mutual exclusive characteristic of:

Species 1 is drawn to "A method, a system, and a computer-readable medium comprising: determining whether a source address for a first packet sent by the source address to a destination address qualifies as a threat; examining the first packet; and determining a response to the first packet based upon the examining and based upon whether the source address qualifies as the threat."

Species 2 is drawn to "A method, a system, and a computer-readable medium comprising: examining a first packet sent by a source address to a destination address; determining whether the destination address is a synthetic hardware address; and when the destination address is the synthetic hardware address, modifying the first packet by replacing the destination address with a hardware address for a device to

receive communication targeted to the destination address, and sending the first packet.”

These above individual species act as evidenced by the representation of each various species with a different figure or set of figures and a different in processing the steps.

A search for one of these mutually exclusive characteristics is not coextensive with a search for the other mutually exclusive characteristics and therefore searching for all mutually exclusive characteristics could not be done without serious burden. The requirement is still deemed proper and is therefore made **FINAL**.

Claim Rejections - 35 USC § 101

4. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

5. Claims 1, 3-40, 42, 44-55, 57-67, 69-70, and 72, 74-85 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

a. Referring to claim 72:

i. Claim 72 recites “A tangible computer-readable medium comprising: threat-determining instructions configured to determine whether a source address for a first packet sent by the source address to a destination address qualifies as a threat; examining instructions configured to examine the first packet; synthetic-address-determining instructions configured to determine whether the destination address is synthetic; and response-determining instructions configured to determine a response to the first packet based upon the examining and whether the source address qualifies as the threat.” The claim is directed toward a software program, and this is a non-statutory subject matter. Furthermore, applicant has pointed out in the specification (see paragraph 0116 of page 22 of specification) “**The instructions 338 may include various operating instructions and computer-implemented instructions for implementing the methods herein, among others. These instructions may take the form of interpretive instructions, programs, and additional data, among others.**”

which clearly including intangible media such as signals, carrier waves, transmissions, optical waves, transmission media or other media incapable of being touched or perceived absent the tangible medium through which they are conveyed. Therefore, claim 72 recites a non-statutory subject matter.

b. Referring to claims 1, 42, 57:

i. These claims consist a method and a system to implement claim 72, thus they are rejected with the same rationale applied against claim 72 above.

c. Referring to claims 3-39, 44-55, 58-67, 69-70, 74-85:

i. These claims are dependent claims of either 1, 42, 57, and 72, thus they are rejected with the same rationale applied against claims 1, 42, 57, and 72 above.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 1, 3-36, 39-40, 42, 44-55, 57-67, 69-70, 72, 74-85, are rejected under 35 U.S.C. 103(a) as being unpatentable over Trcka et al (US 6,453,345 B2), and further in view of Roesch et al (US 7,240,368 B1).

a. Referring to claim 1:

i. Trcka teaches a computer-implemented method comprising:
(1) determining whether a source address for a first packet sent by the source address to a destination address qualifies as a threat, and when the source address qualifies as the threat, determining whether the destination address is synthetic (column 14, lines 61-67; column 15, lines 36-57 of Trcka);

(2) examining the first packet (**column 15, line 58 through column 16, line 4 of Trcka**); and

(3) determining a response to the first packet based upon the examining and based upon whether the source address qualifies as the threat (**column 15, line 58 through column 16, line 4 of Trcka**).

ii. Although Trcka teaches the claimed subject matter, Trcka is silent on the capability of determining whether the destination address is synthetic. On the other hand, Roesch teaches this limitation in **column 7, lines 1-3 of Roesch**.

iii. It would have been obvious to a person having ordinary skill in the art at the time the invention was made to:

(1) have modified the invention of Trcka with the teaching of Thubert for detecting and protecting against security breaches (both internal and external), network failures, and other types of data-compromising events (**column 1, lines 12-15 of Trcka**).

iv. The ordinary skilled person would have been motivated to:

(1) have modified the invention of Trcka with the teaching of Thubert to monitor and record the traffic present on a local area network, wide area network, or other type of computer network, without interrupting or otherwise interfering with the flow of the traffic (**see Trcka's abstract, lines 1-5**).

b. Referring to claim 21:

i. Trcka further teaches:

(1) when the source address fails to qualify as the threat, determining whether the destination address qualifies as a second threat (**column 14, lines 61-67; column 15, lines 36-57 of Trcka**).

c. Referring to claim 26:

i. Trcka further teaches:

(1) when the source address qualifies as the threat, determining a packet type of the first packet (**column 14, lines 61-67; column 15, lines 36-57; and column 18, lines 3-7 of Trcka**).

d. Referring to claim 27:

i. Trcka further teaches:

(1) when the packet type of the first packet is an address resolution protocol request (**column 1, lines 45-48; column 2, lines 49-56; and column 7, lines 57-67 of Trcka**), determining that the response comprises creating a reply comprising the destination address as a reply source address, and sending the reply to the source address (**column 15, line 36 through column 16, line 4 of Trcka**).

e. Referring to claim 28:

i. This claim has limitations that is similar to those of claim 27, thus it is rejected with the same rationale applied against claim 27 above.

f. Referring to claim 36:

i. Trcka further teaches:

(1) performing the response (**column 14, lines 61-67; column 15, lines 36-57 of Trcka**).

g. Referring to claim 39:

i. Trcka further teaches:

(1) wherein the examining the first packet comprises examining a header for the first packet (**column 6, lines 13-16; column 16, lines 49-55 of Trcka**).

h. Referring to claim 40:

i. Trcka further teaches:

(1) wherein the examining the first packet does not comprise examining a payload for the first packet (**column 18, lines 3-14 of Trcka**).

i. Referring to claims 42, 57, 72:

i. These claims consist a system and computer-readable medium to implement claim 1, thus they are rejected with the same rationale applied against claim 1 above.

j. Referring to claims 50, 80:

i. These claims have limitations that is similar to those of claim 1, thus they are rejected with the same rationale applied against claim 1 above.

l. Referring to claims 53, 85:

i. These claims have limitations that is similar to those of claim 26, thus they are rejected with the same rationale applied against claim 26 above.

m. Referring to claims 54, 69:

i. These claims have limitations that is similar to those of claim 27, thus they are rejected with the same rationale applied against claim 27 above.

k. Referring to claims 55, 70:

i. These claims have limitations that is similar to those of claim 36, thus they are rejected with the same rationale applied against claim 36 above.

l. Referring to claim 3:

i. The combination of teaching between Trcka and Roesch teaches the claimed subject matter. Roesch and Trcka further teach:

(1) when the destination address is determined to be synthetic (**column 7, lines 1-3 of Roesch**), determining the response to be dropping the first packet (**column 1, lines 46-48 of Roesch; column 20, lines 40-67 of Trcka**).

m. Referring to claim 4:

i. The combination of teaching between Trcka and Roesch teaches the claimed subject matter. Roesch and Trcka further teaches:

(1) dropping the first packet (**column 1, lines 46-48 of Roesch; column 20, lines 40-67 of Trcka**).

n. Referring to claim 5:

i. The combination of teaching between Trcka and Roesch teaches the claimed subject matter. Trcka further teaches:

(1) when the destination address is determined to be not synthetic and the source address is the threat (**column 14, lines 61-67; column 15, lines 36-57 of Trcka**), determining whether the source address is on a local network (**column 2, lines 11-14 of Trcka**).

o. Referring to claim 22:

i. This claim has limitations that is similar to those of claims 1-3, thus it is rejected with the same rationale applied against claims 1-3 above.

p. Referring to claim 23:

i. This claim has limitations that is similar to those of claim 4, thus it is rejected with the same rationale applied against claim 4 above.

q. Referring to claims 44-46, 59-61, 74-76:

i. These claims have limitations that is similar to those of claims 2-5, thus they are rejected with the same rationale applied against claims 2-5 above.

r. Referring to claims 51, 58, 81:

i. These claims have limitations that is similar to those of claim 2, thus they are rejected with the same rationale applied against claim 2 above.

s. Referring to claims 52, 82:

i. These claims have limitations that is similar to those of claim 27, thus they are rejected with the same rationale applied against claim 27 above.

8. Claims 37-38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Trcka et al (US 6,453,345 B2), in view of Roesch et al (US 7,240,368 B1, and further in view of Miyazaki et al (US 5,517,488).

a. Referring to claims 37-38:

i. The combination of teaching between Trcka and Roesch teaches the claimed subject matter. Trcka further teaches:

(1) wherein the source address comprises at least one of a logical address and a physical address (**column 18, lines 3-7 of Trcka**).

ii. Although Trcka and Roesch teach the source and destination addresses, they are silent on the capability of showing source address and/or destination address includes the logical and physical addresses. On the other hand, Miyazaki teaches this limitation in **Figures 3, 5, 6A-6B, and 8**.

iii. It would have been obvious to a person having ordinary skill in the art at the time the invention was made to:

(1) have modified the modified-invention of Trcka with the teaching of Miyazaki for detecting and protecting against security breaches (both internal and external), network failures, and other types of data-compromising events (**column 1, lines 12-15 of Trcka**).

iv. The ordinary skilled person would have been motivated to:

(1) have modified the modified-invention of Trcka with the teaching of Miyazaki to monitor and record the traffic present on a local area network, wide area network, or other type of computer network, without interrupting or otherwise interfering with the flow of the traffic (**see Trcka's abstract, lines 1-5**).

Conclusion

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thanhnga (Tanya) Truong whose telephone number is 571-272-3858.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kim Vu can be reached at 571-272-3859. The fax and phone numbers for the organization where this application or proceeding is assigned is 571-273-8300.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 571-272-2100.



TBT

January 21, 2008

THANHNGA TRUONG
PRIMARY EXAMINER